



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
-----)	ISCR Case No. 10-03701
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

November 21, 2011

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On October 27, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations). DOHA took action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG).

In a November 20, 2010, response, Applicant admitted all 23 allegations raised under Guideline F. He also requested a hearing before a DOHA administrative judge. DOHA assigned the case to me on February 11, 2011. The parties proposed a hearing date of March 30, 2011. A notice setting that date for the hearing was issued on March 15, 2011. Due to scheduling conflicts with the parties, the hearing was postponed. An amended notice was issued on April 18, 2011, resetting the hearing for May 10, 2011. I convened the hearing as scheduled.

Applicant gave testimony and was given until May 27, 2011, to submit any documents. The Government introduced eight documents, which were accepted into the record without objection as Exs. 1-8 and one demonstrative hearing exhibit (HE-1).

The transcript (Tr.) of the proceeding was received on May 19, 2011. Applicant timely submitted 16 documents that were forwarded by Department Counsel without objection on June 24, 2011 and accepted without objection as Exs. A-P. The record was then closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant failed to meet his burden of mitigating security concerns related to financial considerations. Clearance is denied.

Findings of Fact

Applicant is a 62-year-old member of an engineering staff for a defense contractor. He has worked for the same employer since 1994. He has a bachelor's degree and completed numerous master's degree classes. He is married and has one 24-year-old son.

Applicant currently earns a salary of about \$98,000 a year and receives a monthly pension from a former employer, giving him a combined net monthly income of approximately \$6,200. Until 2009, Applicant supplemented his income by teaching, which paid him an extra \$6,000 to \$7,000 a year, and by tutoring.¹ The teaching position, however, was ultimately eliminated. After falling behind on a home mortgage loan modification program, he ceased making monthly mortgage payments in August 2009 because he could not meet the program's payment requirements.² Applicant makes monthly payments of about \$1,080 for gas, water, electric, cable, and car insurance. After the hearing, Applicant related that his monthly expenses amount to approximately \$5,904 a month.³

Applicant's son moved out of the family home a few years ago to attend college. He graduated from college in December 2009, but still maintains an apartment in his university town. The son previously had one or more roommates, but now lives in his apartment by himself. The son has not come home to live because Applicant "can't tell the man what to do, he is 24 years old."⁴ Applicant supported his unemployed son both during and since the young man's college graduation. He pays for his son's groceries, meals, phone/cable/Internet package, expenses, taxes, and the \$795 a month apartment.⁵ Applicant is also a co-signer on his son's student loans.⁶ The son has not worked since graduating from school in 2009 and is waiting to resolve a medical

¹ Tr. 37-38. There is no indication as to why the tutoring work was curtailed. Applicant indicated that it paid about \$200 a month.

² Tr. 20.

³ Ex. O (Budget).

⁴ Tr. 57. Applicant noted that the son "chose not to be home because he is trying to live, I try to help as much as I can." Tr. 58.

⁵ Tr. 24-25, 27-29, 32.

⁶ Tr. 62-63. The status of the loans is unclear, but they may be in deferral. See also Tr. 64.

condition before seeking employment.⁷ Medical treatment has not been actively pursued because the son is reluctant to see a doctor after suffering a “traumatic experience” with a previous physician concerning his condition.⁸ He also lacked adult health insurance until he was eligible for coverage under Applicant’s health insurance policy in the past year. The son’s condition was described as a urologically restricted catheter.⁹ There is no evidence that a surgical procedure has been scheduled or is imminent. It is unclear whether surgery is actually warranted.¹⁰ That should be decided if or when the son agrees to see a physician.¹¹ Until the medical situation is resolved, Applicant and his wife will continue to support their child.

At present, Applicant does not maintain a savings or checking account. He cashes his monthly pay checks and deals strictly in cash. The banking institution that formerly held his checking account “took it away” from Applicant. He has not kept consistent records regarding his payments toward credit cards.¹² Applicant hoped to set aside money to start resuming his mortgage payments, but has not been financially able to do so.

At issue in the SOR are 23 delinquent debts (SOR allegations ¶¶ 1.a-1.w), amounting to about \$153,800 and ranging from \$37 to \$29,454. As described below, Applicant provided documentary evidence regarding his actions to address some of those debts. However, no documentary evidence was introduced regarding any of the other delinquent debts noted in the SOR.

1.a – Judgment (\$7,742) – Applicant provided evidence representing six \$325 money order payments made between June 2010 and February 2011, which Applicant testified were applied to this debt.¹³ However, only Applicant’s handwritten notations indicate that such payments were made toward this debt. There is no suggestion that any payments were offered after February 2011.

1.f – Charged-off account (\$8,203) – Applicant offered evidence of a payment schedule for what appears to be this debt. It includes handwritten notations suggesting that four

⁷ Tr. 64.

⁸ Tr. 77.

⁹ Tr. 58. The condition causes difficulty in the son’s ability to urinate at will. Applicant noted, “and in [a] job you can’t spend the time in the men’s room. . . .” Tr. 64. However, Applicant did not state whether the son had pursued at-home employment, a position that provided Americans with Disabilities Act (ADA) accommodations, or made any attempts to economize. Applicant’s son also suffers from problems related to constipation. Tr. 66.

¹⁰ Tr. 26, 59.

¹¹ Tr. 77.

¹² Tr. 33.

¹³ Ex. B (Copies of money orders, Jun. 2010-Feb. 2011).

payments were made.¹⁴ He offered evidence that three payments for \$170.94 were made between November 2010 and February 2011.¹⁵ There is no suggestion that any payments were offered after February 2011. No other evidence relevant to this debt was offered.

1.g – 120+ Days past due account (\$350) – Paid.¹⁶

1.i – Charged-off account (\$602) – This account was settled for less than the balance owed.¹⁷

1.j – 120+ Days past due on defaulted home equity loan account (\$596) – Applicant made a late payment on this account in March 2011 for \$260.¹⁸

1.q – Charged-off account (\$22,410) – Applicant provided evidence from an entity indicating receipt of five payments made between October 2010 and February 2011 for \$500 a month.¹⁹ However, there is no evidence or information indicating that those payments were made toward this debt. There is no suggestion that any payments were offered after February 2011.

1.t – Charged-off account (\$37) – Applicant provided evidence that this alleged debt has been resolved.²⁰

1.u – 120+ Days past due on mortgage account (\$29,454) – Applicant provided evidence that his request for a home loan modification was denied in July 2010 and in December 2010 because he did not qualify.²¹ There is no other evidence of efforts to work with his lender to address this debt.

In sum, less than \$1,000 has been fully addressed (¶¶ 1.g, 1.i, and 1.t), with some indication that cursory, incomplete attempts may have been made on five other debts. Applicant testified that he has tried to work with most of his creditors, but that his

¹⁴ Ex. I (Letter, dated Oct. 18, 2010) and Ex. J (Account statement, Nov. 5, 2010-Feb. 3, 2011).

¹⁵ *Id.* The evidence shows two December 2010 payments and one February 2011 payment.

¹⁶ Ex. E (Credit report excerpt, dated May 24, 2011) at 2.

¹⁷ *Id.* at 1.

¹⁸ Tr. 46-49; Ex. G (Statement, dated Apr. 5, 2011). This payment represents evidence of Applicant's most recent payment on the debts at issue regarding SOR allegations ¶¶ 1.a-1.w.

¹⁹ Ex. K (Payment receipts, Oct. 2010-Feb. 2011).

²⁰ Ex. M (Email, undated).

²¹ Ex. C (Letter, dated Dec. 27, 2010) and Ex. D (Letter, dated Jul. 29, 2010).

efforts have not been successful. Many of the debts at issue have been at issue or delinquent since 2008.²²

Applicant seems to have first experienced difficulty in 2008, before losing his teaching position. He first tried to refinance his home in the 2008-2009 time period.²³ He has contemplated filing for bankruptcy with an attorney, but has thus far not filed for bankruptcy protection.²⁴ He hoped to file in June 2011, but as of the May 2011 hearing, he had not met with an attorney or figured out how much he could afford to pay for a Chapter 13 bankruptcy filing.²⁵ Chapter 13 bankruptcy is his only articulated strategy for addressing the debts at issue, as well as his 2010 federal taxes.²⁶ Applicant received financial counseling in about 2008 and also in November 2010.²⁷ Applicant's wife, a homemaker for the past 20 years, is presently unable to work due to a diabetic condition. He thinks she will return to the workplace once her condition is medically addressed.²⁸

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

²² See, e.g., Tr. 66-67, 79.

²³ Tr. 68.

²⁴ Tr. 56; Ex. P (Statement).

²⁵ Tr. 56 (Applicant noted that meeting with an attorney was his "next step"), *but see* Tr. 61-62, 69.

²⁶ Tr. 69-72. The tax debt is not one of the debts enumerated in the SOR.

²⁷ Tr. 73-74.

²⁸ Tr. 75-76. Applicant hopes she can earn sufficient income to offset their son's expenses. Tr. 76.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”²⁹ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.³⁰

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in those to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”³¹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³²

Based upon consideration of the evidence, Guideline F (Financial Considerations) is the most pertinent to this case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Guideline F - Financial Considerations

Under Guideline F, “failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.”³³ It

²⁹ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³⁰ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

³¹ *Id.*

³² *Id.*

³³ AG ¶ 18.

also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”³⁴ Applicant first experienced financial difficulty in 2008. He now has over \$150,000 in delinquent debt. He has only paid three debts, which cumulatively amount to less than \$1,000. Overall, he only provided scant documentary evidence to address a few of the 20 other debts at issue. Of the approximately \$6,200 he has in net income per month, approximately \$5,904 is spent on current bills, his son, and other expenses. Such facts are sufficient to raise Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The debts at issue are multiple in number. Many date back to 2008, when it appears he first experienced financial distress. The vast majority of Applicant’s debt remains unaddressed. While he earns a regular salary and receives pension payments, his monthly income only exceeds his expenses by about \$300. Moreover, there is scant evidence that he recently has tried to economize or seek additional work. Furthermore, as long as his son remains a financial dependent, there is little indication that his monthly expenses will decrease. There is insufficient evidence to raise Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment).

Applicant lost his teaching position and tutoring jobs, which provided at least \$12,000 per year to his income. Those losses occurred in 2009, a year after he first started having financial difficulties. There is no evidence he has tried other routes to deriving additional income. However, to the limited extent those losses exacerbated his already precarious financial situation and could not otherwise be recouped through another part-time position, FC MC AG ¶ 20(b) (the conditions that resulted in the behavior were largely beyond the person’s control (*e.g.*, loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation) and the individual acted responsibly under the circumstances) applies.

Applicant has twice received financial counseling in the last three years. However, there is no evidence that such counseling has helped him address his debts to any notable degree. To date, he has paid or otherwise resolved only 3 of the 23 debts at issue, amounting to less than \$1,000 of the \$150,000+ in delinquent debt at issue. His payments on a few other debts has been sporadic. He has not sought the aid of his son to help him economize. Applicant did not identify any strategy for addressing his debts other than bankruptcy. However, he has not fully committed to a bankruptcy plan and, consequently, he has not developed a demonstrable history of making timely payments on a Chapter 13 bankruptcy plan. Therefore, neither FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear

³⁴ *Id.*

indications that the problem is being resolved or is under control) nor FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2 (a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. In addition, what constitutes reasonable behavior in such cases, as contemplated by FC MC ¶ 20(b), depends on the specific facts in a given case.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the "whole-person" factors. Applicant is a sincere and candid 62-year-old man. Despite losing a second job as a teacher in 2009, Applicant derives a lucrative salary and receives a pension. His monthly expenses are high (approximately \$5,904) in relation to his monthly income (\$6,200). There is no evidence that he has tried to economize to help him better address his debts.

Moreover, Applicant has been exceptionally indulgent with regard to his grown, educated, and unemployed adult son. While Applicant honors his son's wish to live independently in a distant town, the child is completely reliant on Applicant financially. He lives without roommates, demonstrates no signs that he is economizing (ie. foregoing Internet and cable), and does not want to return to his parents' home to live. There is no indication the son has pursued at-home or other alternative work that might accommodate his condition and allow him to generate some income. Such independence has led to a financial drain that highly contributes to Applicant's monthly expenses and directly hinders Applicant's ability to address his debts. Applicant's son's medical condition raises true empathy. However, the son apparently will not seek regular employment until his medical condition is addressed, yet the son is reluctant to seek medical treatment. Consequently, given Applicant's commitment to financially aiding his adult son, until the young man decides to take action regarding both his health, his current level of dependency, and his situation, Applicant's finances will continue to be heavily strained.

Furthermore, Applicant has only paid three minor debts. The few documented attempts to address other debts have been erratic and seemingly random. Applicant's budget shows a high level of expenses in relation to his income, leaving him with only about \$300 after meeting his regular expenses and his contributions to his dependent son. Applicant has not yet devised a workable budget that would make a Chapter 13 bankruptcy a viable option. More importantly, he has not yet filed for such protection. Consequently, he has not yet developed a significant record of consistent payments on a Chapter 13 bankruptcy plan, shown that he has employed a workable plan to address his debts, or implemented such a plan successfully. Given that bankruptcy is

Applicant's solely expressed plan for addressing his debts, and there is no evidence that he is in timely payment on a bankruptcy plan, there is scant evidence available at present to mitigate security concerns.

Based on Applicant's evidence and argument, financial considerations security concerns remain unmitigated. As noted, any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. Clearance is denied.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-1.s:	Against Applicant
Subparagraph 1.t:	For Applicant
Subparagraph 1.u-1.w:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant a security clearance. Clearance denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge